

Senate Engrossed
FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 110

SENATE BILL 1018

AN ACT

AMENDING TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-572; TRANSFERRING AND RENUMBERING SECTION 32-1473, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, AS SECTION 12-573; AMENDING SECTION 12-573, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; RELATING TO HEALTH CARE ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 12, chapter 5.1, article 1, Arizona Revised Statutes, is amended by adding section 12-572, to read:

12-572. Burden of proof for treatment in emergency departments
or rendered by on-call providers

A. UNLESS THE ELEMENTS OF PROOF CONTAINED IN SECTION 12-563 ARE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE, A HEALTH PROFESSIONAL AS DEFINED IN SECTION 32-3201 WHO PROVIDES OR WHO IS CONSULTED TO PROVIDE SERVICES TO A PATIENT OF A LICENSED HOSPITAL IN COMPLIANCE WITH THE EMERGENCY MEDICAL TREATMENT AND LABOR ACT (P.L. 99-272; 100 STAT. 164; 42 UNITED STATES CODE SECTION 1395dd) OR AS A RESULT OF A DISASTER IS NOT LIABLE FOR ANY CIVIL OR OTHER DAMAGES AS A RESULT OF ANY ACT OR OMISSION.

B. UNLESS THE ELEMENTS OF PROOF CONTAINED IN SECTION 12-563 ARE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE REGARDING THE ACTS OR OMISSIONS OF A LICENSED HOSPITAL OR ITS AGENTS AND EMPLOYEES IN CASES THAT ARE COVERED BY SUBSECTION A OF THIS SECTION, THE HOSPITAL IS NOT LIABLE FOR ANY CIVIL OR OTHER DAMAGES AS A RESULT OF ANY ACT OR OMISSION.

Sec. 2. Section 32-1473, Arizona Revised Statutes, is transferred and renumbered for placement in title 12, chapter 5.1, article 1, Arizona Revised Statutes, as section 12-573 and, as so renumbered, is amended to read:

12-573. Limited liability for treatment related to delivery of
infants; exception; definition

A. Unless the elements of proof contained in section 12-563 are established by clear and convincing evidence, a physician licensed to practice pursuant to ~~this chapter or~~ TITLE 32, chapter 13 OR 17 of ~~this title~~ is not liable to the pregnant female patient, the child or children delivered, or their families for medical malpractice related to labor or delivery rendered on an emergency basis if the patient was not previously treated for the pregnancy by the physician, by a physician in a group practice with the physician or by a physician, physician assistant or CERTIFIED nurse midwife with whom the physician has an agreement to attend the labor and delivery of the patient.

B. Unless the elements of proof contained in section 12-563 are established BY CLEAR AND CONVINCING EVIDENCE regarding the acts or omissions of a licensed health care facility or its employees in cases THAT ARE covered by ~~the provisions of~~ subsection A of this section ~~by clear and convincing evidence~~, the health care facility is not liable to the female patient, the child or children delivered or their families for medical malpractice related to labor or delivery.

C. This section does not apply to treatment THAT IS rendered in connection with labor and delivery if the patient has been seen regularly by or under the direction of a licensed health care provider or a licensed physician from whom the patient's medical information is ~~reasonably~~ IMMEDIATELY available to the physicians attending the patient during labor and delivery.

D. For the ~~purpose~~ PURPOSES of this section, "emergency" means when labor has begun or a condition exists requiring the delivery of the child or children.

APPROVED BY THE GOVERNOR JULY 10, 2009.

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FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.